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12 UNITED STATES DISTRICT COURT
13 DISTRICT OF NEVADA

14 Hector Leonard Jardine,

15 Petitioner,

16 v.

17 Brian Williams, *et al.*,

18 Respondents.

Case No. 2:16-cv-02637-RFB-NJK

**Unopposed Motion for extension of
time to file opposition to
respondent's Second Motion to
Dismiss**

(First Request)

ARGUMENT

Petitioner Hector Jardine moves this Court for the entry of an order extending his deadline for filing an opposition to the warden's motion to dismiss by 70 days until July 13, 2022.

By email, counsel for the warden, Senior Deputy Attorney General, Charles L. Finlayson, conveyed that he does not object to this request.

After Hector Jardine filed his original pro se § 2254 petition, the Court ordered Jardine to “show cause in writing why [his] petition should not be dismissed with prejudice as time-barred”.¹ Jardine subsequently filed motions and exhibits demonstrating, as this Court concluded in its December 17, 2017 Order, that he had shown “sufficient cause to not dismiss his petition as untimely and to allow this matter to proceed forward.”² In its Order, the Court conducted an analysis under the equitable tolling doctrine and concluded (1) Jardine’s “appointed counsel abandoned him in much the same way in *Gibbs* was abandoned by his attorney”; and (2) Jardine “demonstrates that he has been pursuing his rights at least as diligently as the petitioner in *Gibbs*, if not more so.”³

The Court appointed counsel to represent Jardine, and he filed his first amended petition on April 25, 2019.⁴ Jardine also filed motions for leave to file a second amended petition, discovery, and a stay so that he may return to state court to exhaust a claim.⁵ The court granted all three requests.⁶

¹ ECF No. 7 at 1.

² ECF No. 10 at 4.

³ ECF No. 10 at 3.

⁴ ECF No. 28.

⁵ ECF Nos. 29, 30, 37.

⁶ ECF Nos. 36, 38.

1 Upon competition of the state litigation, Jardine moved to reopen the case
2 and proceed on his previously filed first amended petition on March 10, 2021.⁷ The
3 Court agreed.⁸

4 Williams again moved to dismiss Jardine's first amended petition on July 16,
5 2021.⁹ Jardine filed a single motion to extend his deadline for filing an opposition to
6 the motion to dismiss before filing a motion to strike, or in the alternative, motion
7 for more definite statement on October 6, 2021.¹⁰ At the same time, Jardine filed a
8 motion to extend his deadline for filing a opposition until after this Court ruled on
9 his motion to strike.¹¹ About a week later, Williams filed an unopposed motion to
10 extend his deadline for responding to Jardine's motion to strike.¹²

11 On October 16, 2021, this Court entered a minute order granting Williams's
12 request for an extension.¹³ Williams timely filed an opposition to Jardin's motion to
13 strike on December 6, 2021.¹⁴

14 Jardine sought an extension for filing a reply in support of his motion to
15 strike on December 10, 2021.¹⁵ In a single minute order, this Court granted
16 Jardine's prior motion to extend the time for filing an opposition to the motion to
17 dismiss and his motion to extend the time for filing a reply in support of the motion
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20 ⁷ ECF No. 39.

21 ⁸ ECF No. 41.

22 ⁹ ECF No. 41.

23 ¹⁰ ECF Nos. 49, 52.

24 ¹¹ ECF No. 53.

25 ¹² ECF No. 54.

26 ¹³ ECF No. 55.

27 ¹⁴ ECF No. 56.

¹⁵ ECF No. 57.

1 to strike.¹⁶ Instead of setting a deadline for the opposition after a ruling on the
2 motion to strike, this Court gave Jardine until January 17, 2022 to file an
3 opposition to the motion to dismiss.¹⁷

4 On January 5, 2022, Jardine filed his third motion for discovery, this time
5 seeking a revised copy of the phone log counsel previously received with phone
6 numbers.¹⁸ Williams did not oppose that request.¹⁹

7 Jardine moved to stay the briefing of the state's first motion to dismiss until
8 it ruled on his motion to strike.²⁰

9 On February 3, 2022, this Court entered an order granting Jardine's motion
10 to strike. It gave Williams 60 days to file a new motion to dismiss.²¹ As a result of
11 that, it denied the first motion to dismiss, and it also granted Jardine's motion for
12 discovery related to phone logs.²²

13 The Nevada Department of Corrections turned over the phone logs on April
14 20, 2022.²³ The log the Department disclosed appears only to have completed calls,
15 not calls that were attempted, but not completed. At counsel's request, the
16 Department is looking into whether another phone log exists.

17 This is Jardine's first request for an extension of time to respond to
18 Williams's second motion to dismiss. The requested extension takes into account the
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21 ¹⁶ ECF No. 58.

22 ¹⁷ ECF No. 58.

23 ¹⁸ ECF No. 60.

24 ¹⁹ ECF No. 62.

25 ²⁰ ECF No. 63.

26 ²¹ ECF No. 64 at 5.

27 ²² ECF No. 64.

²³ Undersigned counsel and the warden's attorney have worked closely together to obtain the phone logs.

1 time necessary for the Department to look into the phone log issue and potentially
2 disclose another phone log, the amount of time necessary to complete Jardine's
3 opposition, and counsel's upcoming responsibilities and travel. It is not made for the
4 purposes of delay. Accordingly, Jardine respectfully asks this Court to grant his
5 requested extension to file the opposition by July 13, 2022.

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7 Dated May 4, 2022

8 Respectfully submitted,

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10 Rene L. Valladares
11 Federal Public Defender

12 */s/ Amelia L. Bizzaro*

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Amelia L. Bizzaro
14 Assistant Federal Public Defender

15 IT IS SO ORDERED:

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RICHARD E. BOULWARE, II
19 **United States District Court**

20 DATED this 6th day of May, 2022.
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